

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

VERONA MEDIA GROUP, LLC
d/b/a ECHO FOX CLOTHING,

Plaintiff,

Case No.: _____

v.

KICH SALES, LLC d/b/a
EASYPEACHES SPORTS APPAREL,

Defendants.

PLAINTIFF'S COMPLAINT FOR COPYRIGHT INFRINGEMENT

NOW COMES the Plaintiff, Verona Media Group, LLC, d/b/a Echo Fox Clothing, by and through its attorneys, Ratzel, Pytlik & Pezze, LLC, as and for a cause of action against the Defendant, Kich Sales, LLC, d/b/a EazyPeaches Sports Apparel, alleges and shows to the Court as follows:

JURISDICTION AND VENUE

1. The Court has subject matter jurisdiction in this action pursuant to 28 USC §1331 and §1338(a), as this case arises under the U.S. Copyright Act.
2. Venue is proper in this Court pursuant to 28 USC §1400(a), as the Defendant resides and/or maintains a principal place of business in this District.

PARTIES

3. Verona Media Group, LLC is a Nevada limited liability company engaged in the business of selling clothing to consumers over the internet, with its principal office located in Las Vegas, Nevada.

10. Echo Fox registered its copyright for the photograph entitled “2456 Asphalt” with the United States Copyright Office on July 22, 2014 and was provided Registration Number VA 1-922-595 therefor. Exhibit 3 attached hereto is a true and correct copy of the Certificate of Registration issued by the United States Copyright Office as well as said photograph.

11. Echo Fox registered its copyright for the photograph entitled “2456 Cranberry” with the United States Copyright Office on July 22, 2014 and was provided Registration Number VA 1-922-594 therefor. Exhibit 4 attached hereto is a true and correct copy of the Certificate of Registration issued by the United States Copyright Office as well as said photograph.

12. Echo Fox registered its copyright for the photographs entitled “TR401 Track Tee Shirt” with the United States Copyright Office on July 24, 2014 and was provided Registration Number VA 1-922-809 therefor. Exhibit 5 attached hereto is a true and correct copy of the Certificate of Registration issued by the United States Copyright Office as well as said photographs.

13. On or about July 28, 2014, Echo Fox first became aware that EazyPeaches had violated its copyrights in one or more distinct ways. On said date, and in the course of marketing its merchandise to customers, Echo Fox saw several infringements of its photographs on EazyPeaches’ eBay website.

14. These infringing photographs included Echo Fox’s “2456 White,” which EazyPeaches used to market “American Apparel Unisex XXS XS-M L XL DEEP V-Neck 100% Cotton T-Shirt a6456 Tee.” Exhibit 6 attached hereto is a true and correct copy of an image of EazyPeaches’ eBay website showing its unauthorized use of “2456 White.”

15. These infringing photographs included Echo Fox’s “2456 Black,” which EazyPeaches used to market “American Apparel Unisex XXS XS-M L XL DEEP V-Neck 100%

Cotton T-Shirt a6456 Tee.” Exhibit 7 attached hereto is a true and correct copy of an image of EazyPeaches’ eBay website showing its unauthorized use of “2456 Black.”

16. These infringing photographs included Echo Fox’s “2456 Asphalt,” which EazyPeaches used to market “American Apparel Unisex XXS XS-M L XL DEEP V-Neck 100% Cotton T-Shirt a6456 Tee.” Exhibit 8 attached hereto is a true and correct copy of an image of EazyPeaches’ eBay website showing its unauthorized use of “2456 Asphalt.”

17. These infringing photographs included Echo Fox’s “2456 Cranberry,” which EazyPeaches used to market “American Apparel Unisex Size XXS-L XL XXL V Neck 100% Cotton T-Shirt 2456 Tee.” Exhibit 9 attached hereto is a true and correct copy of an image of EazyPeaches’ eBay website showing its unauthorized use of “2456 Cranberry.”

18. These infringing photographs included Echo Fox’s “TR401 Track Tee Shirt,” which EazyPeaches used to market “American Apparel Unisex XS-M L XL Vintage Track Tee Tri-blend T-Shirt tr401.” Exhibit 10 attached hereto is a true and correct copy of images of EazyPeaches’ website showing its unauthorized uses of “TR401 Track Tee Shirt.”

19. EazyPeaches never obtained permission to utilize any of Echo Fox’s copyrighted photographs to market merchandise on its eBay website, or elsewhere.

20. That EazyPeaches benefitted from its unauthorized use of Echo Fox’s copyrighted photographs by selling its merchandise to consumers on its eBay website.

21. On November 13, 2014, Echo Fox placed EazyPeaches on notice of their infringing activities, demanded that they cease and desist from said activities, requested that evidence be preserved, and that commercial general liability insurance carriers be placed on notice of the claims.

**Causes of Action for Non-Willful Copyright Infringement
Count One**

22. Echo Fox re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 21.

23. Defendant, without knowledge or intent, infringed Echo Fox's copyright in one or more of Echo Fox's photographs identified and described in paragraphs 8 through 12 by scanning, copying, and/or reproducing unauthorized copies thereof, in violation of 17 U.S.C. §106(1).

Count Two

24. Echo Fox re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 23.

25. Defendant, without knowledge or intent, infringed Echo Fox's copyright in one or more of Echo Fox's photographs identified and described in paragraphs 8 through 12 by publicly displaying, on its eBay website and elsewhere, for purposes of advertising and marketing, unauthorized copies or derivatives thereof, in violation of 17 U.S.C. §106(5).

**Alternative Causes of Action for Willful Copyright Infringement
Count Three**

26. Echo Fox re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 25.

27. Alternatively, Defendant willfully infringed Echo Fox's copyright in one or more of Echo Fox's photographs identified and described in paragraphs 8 through 12 by scanning, copying, and/or reproducing unauthorized copies thereof, in violation of 17 U.S.C. §106(1).

Count Four

28. Echo Fox re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 27.

29. Alternatively, Defendant willfully infringed Echo Fox's copyright in one or more of Echo Fox's photographs identified and described in paragraphs 8 through 12 by publicly displaying, on its eBay website and elsewhere, for purposes of advertising and marketing, unauthorized copies or derivatives thereof, in violation of 17 U.S.C. §106(5).

Violations of DMCA §1202

Count Five

30. Echo Fox re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 29.

31. Additionally and alternatively, Defendant violated §1202 *et seq.* of the Digital Millennium Copyright Act (hereinafter "DMCA"), 17 U.S.C. §1202.

32. In using the photographs identified above, Defendant intentionally removed and omitted Echo Fox's copyright management information from copies of Echo Fox's photographs.

33. Defendant thereafter distributed copies of derivatives of such photographs on its eBay website and elsewhere, knowing that such copyright management information had been removed or omitted without proper authorization.

34. At the time Defendant removed Echo Fox's copyright management information from copies of its photographs, and at the time it distributed copies of the photographs from which the copyright management information had been removed or omitted, Defendant knew or had reasonable grounds to know that such behavior would induce, enable, facilitate, or conceal the infringement of Echo Fox's copyrights.

35. Echo Fox is entitled and seeks to recover from Defendant statutory damages not exceeding \$25,000 for each act committed in violation of its rights under 17 U.S.C. §1202, *et seq.*

36. Pursuant to 17 U.S.C. §1203(b)(5), Echo Fox is entitled and seeks to recover its reasonable attorneys' fees.

WHEREFORE, the Plaintiff, Verona Media Group, LLC, d/b/a Echo Fox Clothing demands that judgment be entered in its favor and against the Defendant as follows:

a.) For an accounting by Defendant of its activities in connection with its infringements of Echo Fox's copyrights in and to the above-described photographs, as well as of the gross profits and revenue attributable to its infringements;

b.) For Echo Fox's actual damages, in an amount to be determined at trial;

c.) For Defendant's direct and indirect profits attributable to its infringements, including but not limited to those direct and indirect profits derived from the advertising, promotion, and marketing of infringing photographs in an amount to be determined at trial;

d.) In the alternative, at Echo Fox's option an award of statutory damages in lieu of actual damages for infringement of any one or more of their photographs, described above, in an amount to be determined at trial;

e.) An award of statutory damages for each and every violation by defendant of the DMCA, 17 U.S.C. §1202, *et seq.*;

f.) Echo Fox's actual attorney fees, court costs, taxable costs, and the costs associated with the retention, preparation and testimony of expert witnesses;

g.) For both temporary and permanent injunctions barring Defendant, their agents, employees, and/or servants, from infringing Echo Fox's copyrights in any manner whatsoever,

including the advertising, marketing, and use of infringing photographs, and further barring the Defendant from publishing through any visual media, and from selling, marketing or otherwise distributing copies of Echo Fox's photographs and/or derivatives thereof;

h.) An order requiring Defendant to produce, for impounding during the pendency of this action and for destruction thereafter, copies of all photographs which infringe Echo Fox's copyrights, including digitally scanned and/or stored images, which are in the possession of, or under the direct or indirect control of the defendant;

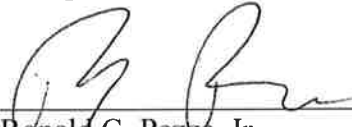
i.) For such other relief as the Court determines to be just and equitable.

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY

Dated this 2nd day of August, 2015.

RATZEL, PYTLIK & PEZZE, LLC
Attorneys for Plaintiff, Verona Media
Group, LLC d/b/a Echo Fox Clothing

By:



Ronald G. Pezze, Jr.
State Bar No. 1008987

P.O. ADDRESS:

3330 North Springdale Road
Brookfield, Wisconsin 53045
T: 262-781-1911
F: 262-781-0429